COUNTY OF SPOKANE, WASHINGTON, ET AL. *v.* UNITED STATES.

CERTIORARI TO THE SUPREME COURT OF WASHINGTON.

No. 164. Argued February 20, 21, 1929.—Decided April 8, 1929.

1. Congress has power to provide that taxes due to the United States by an insolvent debtor shall have priority in payment over taxes due by him to a State. Pp. 86–93.
2. Under Rev. Stats. § 3466, a debt owed to the United States in the form of income taxes and penalties assessed for former years after the taxpayer has become insolvent and his personal property has been taken by a receiver in a state court for the payment of his debts, is entitled to payment out of the funds derived by the receiver from his sale of such property, with priority (1) over county taxes assessed on those funds after the federal assessments were made and (2) over county taxes assessed on personal property of the taxpayer before the appointment of the receiver but not shown to be supported by a specific lien under the state law. P. 93.

147 Wash. 176, affirmed.

CERTIORARI, 278 U. S. 585, to review a judgment of the Supreme Court of Washington which, reversing a state court of first instance, upheld a claim of the United States for payment of income taxes and penalties from funds in the hands of a receiver, in priority over claims for county taxes.

Mr. Charles W. Greenough, with whom *Messrs. A. O. Colburn* and *S. R. Clegg* were on the brief, for petitioners.

These taxes became a lien on the personal property taxed, Remington's Comp. Stats. of Washington, 1922, § 11272; *American Bank* v. *King County,* 92 Wash. 650; *Raymond* v. *King County,* 117 Wash. 343; *Pennington* v. *Yakima County,* 127 Wash. 538; *Minshull* v. *Douglas Co.,* 133 Wash. 650, which is transferred from the specific items sold to the fund in the hands of the receiver. *State*

ex rel. Dooley v. *Superior Court,* 128 Wash. 253; *Western Electric Co.* v. *Norway, etc. Co.,* 126 Wash. 204.

It has never been held by this Court that the Government's claim came ahead of a pre-existing lien. The applicable decisions seem to hold otherwise. *United States* v. *Griswold,* 8 Fed. 496; *York Mfg. Co.* v. *Cassel,* 201 U. S. 344; *Marshall* v. *New York,* 254 U. S. 380; *In re Tressler,* 20 F. (2d) 663; *In re A. E. Fountain,* 295 Fed. 873. And see *Ferris* v. *Chic-Mint Gum Co.,* 14 Del. Ch. 270.

Section 3466 of the Revised Statutes does not create a lien in favor of the United States. *United States* v. *Oklahoma,* 261 U. S. 253.

The estate in the hands of the receiver is subject to assessment for personal property taxes, and they are in substance and effect an expense of the receivership. The government claim for income taxes did not become a lien until March 5, and May 7, 1923, and was never filed in the office of the clerk of the District Court, unless the filing of the claim with the receiver was such a filing.

The state tax is levied without regard to the income of the taxpayer; the federal income tax is a contingent tax, levied only on profit above a certain amount.

Why are not taxes levied by a State to pay its judges and maintain its courts just as much expenses and costs of administering an insolvent estate as the fees of the receiver or his attorney, or storage charges for housing the assets, paid by authority of and under the direction of that court? Neither § 3186 nor § 3466 excludes the expenses of the receivership from the operation of its express terms.

An absurd result follows the Government's construction of § 3186. Mortgages, purchasers, and judgment creditors having prior liens, are expressly given preference to the government lien. Nothing is said about state tax liens; but the State makes a tax lien superior to that of mortgagees and judgment creditors. See *Ferris* v. *Chic-*

Mint Gum Co., 14 Del. Ch. 270. Cf. *United States* v. *Katz*, 271 U. S. 354.

When Congress has seen fit to subordinate its claim for income taxes to that of mere private citizens, isn't it "consistent with the legislative purpose" to assume that it intended also to subordinate its claim to that of a sovereign State? And why isn't the doctrine that an independent sovereignty is not bound by a statute unless specifically mentioned therein also applicable here? *Arkansas R. Comm'n* v. *Chicago, R. I. & P. R. Co.*, 274 U. S. 597.

This Court has repeatedly held that a statute will not be construed so as to raise a grave and doubtful constitutional question if some other construction is open. If no other construction can be given than that contended for by the Government, then it is our contention that the Federal Constitution prohibits the interference of the Government in the present situation. *Metcalf* v. *Mitchell*, 269 U. S. 514.

Solicitor General Mitchell, Assistant Attorney General Mabel Walker Willebrandt, and *Messrs. Sewall Key* and *John Vaughan Groner,* Special Assistants to the Attorney General, were on the brief for the United States.

The priority secured to the United States by § 3466, Rev. Stats., is priority over all other creditors, including a State and its subdivisions. *Price* v. *United States*, 269 U. S. 492; *United States* v. *Nat'l Surety Co.*, 254 U. S. 73; *United States* v. *San Juan County*, 280 Fed. 120; *Stover* v. *Scotch Hills Coal Co.*, 4 F. (2d) 748; *Merryweather* v. *United States*, 12 F. (2d) 407; *United States* v. *Snyder*, 149 U. S. 210; *Field* v. *United States*, 9 Pet. 182; *United States* v. *Oklahoma*, 261 U. S. 253; *Frick* v. *Pennsylvania*, 268 U. S. 473; *Florida* v. *Mellon*, 273 U. S. 12; *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483.

The theory that in collecting its own taxes the Federal Government may not interfere with the collection of state taxes results in supremacy of the state law and is fundamentally erroneous. *United States* v. *Fisher,* 2 Cranch 358.

If the counties had a prior lien, some support for petitioners might perhaps be found in *Conard* v. *Atlantic Ins. Co.,* 1 Pet. 386; and *Brent* v. *Bank of Washington,* 10 Pet. 596.

But, the counties have no prior lien and we are not dealing here, as in those cases, with a demand of the United States for priority of a general claim over prior specific liens. The decisions of the Supreme Court of Washington establish that the personal property tax is a personal obligation of the owner of the property at the time of the assessment, and also a lien upon the specific personal property charged from and after the date of the assessment. There is no evidence that such a specific lien exists. While the state law also provides a lien upon all other real and personal property of the person assessed, it is a floating lien which does not become fixed until the property is seized by the sheriff. §§ 11257 and 11258, Remington's Comp. Stats.; P. C., §§ 6957 and 6958. See also *Pennington* v. *Yakima County,* 127 Wash. 538; *Minshull* v. *Douglas County,* 133 Wash. 650.

The priority in favor of the United States attached upon the appointment of a receiver. *United States* v. *Oklahoma,* 261 U. S. 253.

Petitioners have no lien as to any of the six years involved, such as would take precedence over the claim of the United States. Distinguishing *State ex rel. Dooley & Co.* v. *Superior Court,* 128 Wash. 253, and *Western Electric Co.* v. *N. P. C. & D. D. Co.,* 126 Wash. 204.

The record in no way shows that the specific property on which the State assessed its tax (save that on the

money held by the receiver which was only assessed after the priority of the United States had attached) ever came into the hands of the receiver or was, by him, sold.

The State must affirmatively identify the property held by the receiver as the identical property against which the tax was assessed. See *Wilberg* v. *Yakima County*, 132 Wash. 219.

But, even if the situation were otherwise and the claim of the United States were not preferred by the statute, it would still be true that the federal claim antedates the claim of the counties. The liability for federal income taxes relates to the years 1917 to 1920, inclusive. It is settled that no assessment of the Commissioner of Internal Revenue was necessary for the collection of a tax at least in a direct action by the United States. *Dollar Savings Bank* v. *United States*, 19 Wall. 227; *United States* v. *Chamberlain*, 219 U. S. 250; *New York Life Ins. Co.* v. *Anderson*, 257 Fed. 576. The failure of the taxpayer to make proper returns does not make the taxes which should have been paid before any the less of a debt from the time they ought to have been paid. *King* v. *United States*, 99 U. S. 229.

The appointment of a receiver and the taking of property into the hands of the court through its officers do not withdraw it from taxation. *In re Tyler*, 149 U. S. 164. In some cases it has been held that taxes levied upon personal property in the hands of a receiver become a charge upon the estate and are properly payable as a part of the costs of administration. *Wiswall* v. *Kunz*, 173 Ill. 110; *Gehr* v. *Iron Co.*, 174 Pa. St. 430. However, the authorities are not uniform. *New Jersey* v. *Lovell*, 179 Fed. 321; *In re Halsey Electric Generator Co.*, 175 Fed. 825, certiorari denied, 219 U. S. 587; *Chesapeake & Ohio Ry. Co.* v. *Atlantic Transportation Co.*, 62 N. J. Eq. 751; *In re Oxley*, 204 Fed. 826; *In re Wyley Co.*, 292 Fed. 900; *In re Jacobson*, 263 Fed. 883.

The record in this case shows that the expenses of administration were given priority over petitioners' tax claims, including those assessed against the receiver. Section 3466, Rev. Stats., may be open to the construction that it gives priority to debts owing to the United States from the insolvent, only over debts owing to others from the insolvent and not over debts of the receiver arising after insolvency. Had the taxes levied upon the personal property in the hands of the receiver been considered as a part of the administration expenses and so given priority as in the nature of a current personal obligation of the receiver himself, the United States would hesitate to claim priority over the county taxes levied after the receiver was appointed. However, they were not so treated in the state courts, and the petition for the writ of certiorari does not raise that question.

The lien of the United States under § 3186 of the Revised Statutes is prior to any lien of the counties.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This case presents the question of the priority of payment of debts due to the United States over those due to a State or its agencies against the same fund for state taxes, under § 3466 of the Revised Statutes of the United States.

In August, 1922, a receiver for the Culton-Moylan-Reilly Auto Company, an insolvent corporation, was appointed by the Superior Court of Spokane County, Washington. Under the order of the court the receiver sold the personal property of the corporation and reduced the same to cash, which he held for distribution. On March 1, 1921, and March 1, 1922, Spokane and Whitman Counties, of the State of Washington, had assessed against the personal property of the company the total amounts of $6,195.38 and $410.36, respectively; but the taxes were

not paid and the proceeds of the subsequent sale of assets by the receiver were deposited in court. On September 23, 1924, Spokane County assessed the money in the hands of the receiver for the years 1923 and 1924, and levied taxes thereupon in the total amount of $1,390.10. On December 20, 1926, Spokane County made a further assessment and levy on the moneys in the hands of the receiver for the years 1925 and 1926 in the total amount of $1,229.52.

The United States Commissioner of Internal Revenue, on February 28, 1923, and May 2, 1923, assessed Federal income taxes and penalties for the years 1917, 1918, 1919 and 1920 in the total amount of $70,268.58. But none of these taxes or penalties were paid.

The funds in the hands of the receiver are insufficient to pay in full the claims of the United States, and Spokane and Whitman counties. By proper pleadings, issues were made, presenting the question of the comparative priorities in distribution of the fund in his hands. The Superior Court held that the two counties were entitled to priority, not only as to the county taxes levied against the corporation, but for the county taxes for 1923–1926 assessed on the money in the receiver's hands. On an appeal to the Supreme Court of Washington, the judgment was reversed and priority awarded to the United States. 147 Wash. 176.

Section 3466 of the Revised Statutes provides in part that " whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied."

The Constitution, Article 1, Section 8, provides that Congress shall have power to lay and collect taxes and to make all laws which shall be necessary and proper to carry this and its other powers into execution. Article IV of

the Constitution declares that the Constitution and the laws made in pursuance thereof shall be the supreme law of the land.

The constitutional validity of the priority of claims of the United States against insolvent debtors, declared in § 3466, was established by this Court very early in the history of the Government. *United States* v. *Fisher,* 2 Cranch 358. But it was not established as between debts owing to the States and debts owing to the United States until after a critical controversy between those who looked to the maintenance of the supremacy of the national government and those who were anxious to sustain undiminished the power of the States.

Section 3466 R. S. was § 5 of an Act entitled "An Act to provide more effectually for the settlement of accounts between the United States and receivers of public money," enacted in 1797, c. 20; 1 Stat. 515. It was amended by an Act of 1799, § 65, c. 22; 1 Stat. 676.

The language has been varied very little since these original enactments. The whole Act of 1797 came up for consideration in *United States* v. *Fisher.* There seems to have been a division among the Judges. Chief Justice Marshall delivered the opinion of the Court, which upheld the priority of the United States as against the claims of the States, and held that the Act extended not only to revenue officers and persons accountable for public money, but to debtors generally. The Chief Justice said (p. 396):

"If the act has attempted to give the United States a preference in the case before the court, it remains to inquire whether the constitution obstructs its operation. . . .

"The government is to pay the debt of the Union, and must be authorized to use the means which appear to itself most eligible to effect that object. It has, consequently, a right to make remittances by bills or otherwise,

and to take those precautions which will render the transaction safe.

"This claim of priority on the part of the United States will, it has been said, interfere with the right of the state sovereignties respecting the dignity of debts, and will defeat the measures they have a right to adopt to secure themselves against delinquencies on the part of their own revenue officers. But this is an objection to the constitution itself. The mischief suggested, so far as it can really happen, is the necessary consequence of the supremacy of the laws of the United States on all subjects to which the legislative power of congress extends."

This case was decided in 1805. Later that year the question arose in a Pennsylvania state court. *United States* v. *Nicholls,* 4 Yeates 251. Nicholls was indebted to the United States, and on June 9, 1798, executed a mortgage to the United States supervisor of the revenue for the use of the United States. There was a levy upon the lands of Nicholls and they were sold for $14,530. The money was deposited in the hands of the prothonotary of the court, subject to the court's order. Nicholls made an assignment for the benefit of his creditors and a commission of bankruptcy issued against him. The Attorney General relied on this same 5th section of the Act of 1797, and the issue arose whether in the distribution of that fund the laws of Pennsylvania, giving a preference to that State in the payment, should prevail over the federal act of 1797. Mr. Justice Yeates, speaking for the Court, said, p. 259:

"Congress have the concurrent right of passing laws to protect the interest of the union, as to debts due to the government of the United States arising from the public revenue; but in so doing, they can not detract from the uncontrollable power of individual states to raise their own revenue, nor infringe on, or derogate from the sovereignty of any independent state. . . . The rights of

the general government to priority of payment, and the rights of individual states, are contemplated as subsisting at the same time, and as perfectly compatible with each other. This can only be effected by giving preference to each existing lien, according to its due priority in point of time. I know of no other mode whereby the several conflicting claims can with justice be protected and secured."

The colleagues of Judge Yeates concurred with him, but one of them expressed regret that the opinion in the *Fisher* case, *supra,* delivered previously, had not been furnished for comparison. The decisions in the *Fisher* and the *Nicholls* cases created much popular excitement, and, united with other issues of a similar character as between the supporters of the federal government and the state governments, led to much concern over the open defiance of the decisions of this Court, until the issues were disposed of in the case of *United States* v. *Judge Peters,* 5 Cranch 115. See the account of the litigation in Charles Warren's Supreme Court in United States History, vol. 1, pp. 372, 538 *et seq.* Four years after the decision in the *Nicholls* case, a review of that case was sought in this Court on a writ of error. When it came to be heard, after nine years more of inaction, it was dismissed for lack of jurisdiction, on the ground that the record did not disclose the insolvency of the debtor so as to make § 3466 applicable; and thus was eliminated the federal question. 4 Wheat. 311.

No question of the construction of § 3466 seems to have come before this Court again until, in *Field* v. *United States,* 9 Pet. 182, it was sought to make certain trustees liable from their own funds, because they had made disbursements out of a bankrupt's estate, as to which the United States was entitled to priority. It was objected that the distribution had been made under order of the parish court in an action in which the United States was

not a party. This Court held that the United States was not bound to become a party, and said, p. 201:

"The local laws of the state could not, and did not, bind them [the United States] in their rights. They could not create a priority in favor of other creditors, in cases of insolvency, which should supersede that of the United States."

The power of the Congress of the United States, in giving preference to the debts of the Government of the United States over those of the separate States, is very clearly brought out in *Lane County* v. *Oregon,* 7 Wall. 71, which may well be referred to here, because there are some expressions in that opinion which, taken away from their context, have been used to give an erroneous view.

After discussing the taxing powers of the national and state governments, the Court, speaking by Chief Justice Chase, said of the state power of taxation, p. 77:

"It is indeed a concurrent power, and in the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the State constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the national government."

In *United States* v. *Snyder,* 149 U. S. 210, the question was raised whether the tax system of the United States could be made subject to the recording liens of the States. This Court said, p. 214:

". . . the grant of the power and its limitation are wholly inconsistent with the proposition that the States

can by legislation interfere with the assessment of Federal taxes . . ."

In *United States* v. *San Juan County,* 280 Fed. 120, and in *Stover* v. *Scotch Hills Coal Co.,* 4 F. (2d) 748, § 3466 came directly under consideration, and the priority of the United States against that of the States was fully sustained. It was also sustained by an unreported decision of the District Court of the Eastern District of Washington, in a proceeding relating to the very taxes here involved, but the judgment was reversed for lack of jurisdiction because the jurisdiction of the state courts had first attached. *Merryweather* v. *United States,* 12 F. (2d) 407.

Petitioners rely on *Ferris* v. *Chic-Mint Gum Co.,* 14 Del. Ch. 232, where there were several claimants,—a mortgagee, the State, and the United States. Under R. S. 3186, the mortgagee was given priority over the United States. By state law, the State was preferred to the mortgagee. The Chancellor allowed the claims in the order of the State, the mortgagee, and the United States, holding that " when the Government agreed by Section 3186 to take rank after the mortgagee, it must necessarily follow that it is subordinate in rank to those who are superior to its immediate senior." The Chancellor observed that his conclusion arose out of the peculiar facts of the case, and that it was unnecessary for him to venture into the broad field of constitutional law. Without concurring in the conclusion of the Chancellor, it is enough to say that, as there is no such third creditor here, the case is not in point. Moreover, it is contended by the Government that the relative priorities could have been maintained in that case by setting apart sufficient funds to pay the mortgage before paying the federal taxes and then providing for payment of the state tax out of the sum so set apart.

In *United States* v. *National Surety Co.,* 254 U. S. 73, the question was whether, in the distribution of a bank-

rupt's estate, the United States had priority over a surety company entitled to subrogation under § 3468 of the Revised Statutes. Upon this point this Court said, p. 76:

"The priority secured to the United States by § 3466 is priority over all other creditors; that is, private persons and other public bodies."

After these cases came the case of *United States* v. *Oklahoma,* 261 U. S. 253, in which the question was of the application of § 3466 to the liquidation of a state bank under the state law and of priority of debts of the United States in such a case. This Court found that the section did not apply, because there did not appear to be insolvency of the bank as used therein. But the Court had to consider the meaning and effect of the section, and said, p. 260:

"Where the debtor is divested of his property in one of the modes specified in the act, the person who becomes invested with the title is made trustee for the United States and bound first to pay its debt out of the debtor's property. *Beaston* v. *Farmers' Bank of Delaware,* 12 Pet. 102, 133–135. The priority given the United States can not be impaired or superseded by state law."

Section 3466 was fully considered in the case of *Price* v. *United States,* 269 U. S. 492, and its history from 1789 clearly traced. See also *United States* v. *Butterworth-Judson Corp.,* 269 U. S. 504; *Bramwell* v. *U. S. Fidelity Co.,* 269 U. S. 483; *Stripe* v. *United States,* 269 U. S. 503. In these cases the word "debts" used in the section was held to include taxes. The Court said in the *Price* case, citing an opinion of Mr. Justice Story, p. 499:

"The claim of the United States does not rest upon any sovereign prerogative; but the priority statutes were enacted to advance the same public policy which governs in the cases of royal prerogative; that is, to secure adequate public revenue to sustain the public burdens. *United States* v. *State Bank of North Carolina,* 6 Pet. 29,

35. And to that end, § 3466 is to be construed liberally. Its purpose is not to be defeated by unnecessarily restricting the application of the word 'debts' within a narrow or technical meaning."

The foregoing citations certainly make it clear that the United States has power, in order to collect its taxes and its revenues and debts due it, to confer priority for them over those of the States.

There remains only to determine what priority it has conferred. It may withhold it or vary it, and it has sometimes done so. When, in this case, did the priority attach and apply? It was said in *United States* v. *Oklahoma,* 261 U. S. 253, 260, that in a case like this it applied when the receiver was appointed. The appointment was on August 28, 1922. The taxes and penalties due the United States, amounting to $70,268.58, were assessed on February 28, 1923, and May 2, 1923, and therefore the priority of the United States attached on or before those dates. No assessment by the counties upon specific property in the hands of the receiver was made until September 23, 1924. The claim of the United States, therefore, had priority over such claims.

Assessments for Spokane County for $6,195.38, and of Whitman County for $410.36, were made in 1921 and 1922 before the receiver was appointed. What is the effect of those claims against the fund in court? In *Wilberg* v. *Yakima County,* 132 Wash. 219, it is held that the amount of the tax is the personal obligation of the person who owned the property at the time of the assessment, and that the tax is to be collected, if the property still continues in the hands of the person against whom it was assessed, from the property; if that specific property does not exist in such hands, the amount of the tax may be collected as a lien upon all the real and personal property of the person assessed, and may be collected from the other personal or real property of such person by seizure,

distraint or other specific proceedings. It would seem to follow that a lien for these particular taxes could not interfere with the priority of the United States, for there is nothing in this record to show that distraint by the sheriff or any of the necessary procedure mentioned in the statute followed.

From the judgment of the majority of the Supreme Court of Washington in this case, we must infer that the liens of the two counties for the taxes levied before the receiver was appointed and not collected were not specific. This is really a state question. It is explained by the concurring opinion of Judge Parker, as follows:

"I concur in the result reached in the foregoing majority opinion solely upon the ground that this tax debt due to the United States, viewed apart from any supporting lien right, has priority over this tax debt due the State of Washington, viewed apart from any supporting lien right. It seems to me that each of these two tax debts primarily came into existence by the levy of a tax in personam, and not by the levy of a tax in rem. I think a critical reading of the revenue legislation of the respective sovereignties, the United States and the state, and the record in this case showing the manner of levying in these respective taxes, will render this plain. The revenue legislation of each has prescribed procedure by which its personam tax debts may be made specific liens upon property of one personally owing such tax debt. This record, I think, warrants the conclusion that neither the United States, the state of Washington nor Spokane County for the state of Washington has ever, by the prescribed statutory procedure, perfected its inchoate tax lien right against any of the property of which the funds here in question are the proceeds. I therefore view these respective tax debts wholly apart from any supporting lien right. Thus I think the question of which shall be first satisfied out of these funds is determinable by the language of §3466,

quoted in the majority opinion, and hence must be determinable in favor of the United States."

Whatever might have been the effect of more completed procedure in the perfecting of the liens under the law of the State, upon the priority of the United States herein, the attitude of the state court relieves us of consideration of it.

Judgment affirmed.

CARSON PETROLEUM COMPANY *v.* VIAL, SHERIFF AND TAX COLLECTOR, ET AL.

CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

No. 306. Argued February 28, 1929.—Decided April 8, 1929.

1. Goods purchased at interior points for export do not lose their character as goods in foreign commerce and become subject to state taxation because, after shipment to the exporter to a domestic port, they are temporarily stored there for reasons of expedition and economy, preparatory to their loading on the vessels of foreign consignees. P. 101.
2. An exporter bought oil in interior States to fill orders from abroad; had it shipped by rail in tank cars to a port in Louisiana, on bills of lading to the exporter at export rates; pumped it from the car tanks into storage tanks at the port; and from these delivered it into the ships of foreign consignees, the title passing from the exporter to them upon such delivery. The oil in each tank car, and as stored, was not segregated or destined to any particular cargo or shipment abroad; but it was all bought and held to fill foreign orders previously received; none of it was or could be otherwise disposed of at that port; none of it was subjected to any treatment of manufacture there; and the storage was but a necessary means of securing prompt transshipment and avoiding demurrage charges, by accumulating the oil from the tank cars pending the arrival of a foreign consignee's ship, or to make up a full cargo for one already waiting. *Held* that the continuity of the journey was not broken by the storage, and that a Louisiana tax on the oil while so stored was unconstitutional.

166 La. 378, reversed.